



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

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ATTORNEY GENERAL*Superseded by
Art. 29 d. V. C. S.*

Hon. Tom A. Craven
County Auditor
McLennan County
Waco, Texas

Dear Sir:

Opinion No. 0-2932

Re: Status of McLennan County
with respect to Article
5139, Revised Civil Statutes,
1925

We are in receipt of your opinion request wherein you inquire relative to the status of McLennan County in connection with Article 5139, Revised Civil Statutes, 1925. You inquire particularly as to (1) whether or not district judges whose courts are located in McLennan County are entitled to \$1,500 additional annual salaries for their services as members of the County Juvenile Board; (2) if the district judges are entitled to such compensation, from what beginning date should the salaries be calculated; (3) if the district judges are entitled to such compensation, does the commissioner's court have a legal basis for exercising discretion in determining whether or not to order payment.

You have advised us that the population of McLennan County, according to the 1930 census, was, in round numbers, 98,000. But the United States Official Census of 1940 shows the population of McLennan County to be 101,824. Further, that the 1940 census figures for McLennan County were published by the census district supervisor on or about June 28, 1940, and that immediately following the publication of these census figures, preliminary discussions were entered into and plans

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made by the district judges affected, and the County Judge of McLennan County, relative to the functioning of a county juvenile board for McLennan County as provided under Article 5139, Revised Civil Statutes, and the succeeding articles. That on August 26, officers of such board were designated and other organization details attended to with all eligible members of the board participating.

Article 5139, Revised Civil Statutes of Texas, 1925, reads as follows:

"In any county having a population of one hundred thousand or over, according to the preceding Federal census, the judges of the several district and criminal district courts of such county, together with the county judge of such county, are hereby constituted a Juvenile Board for such county. The annual salary of each of the judges of the civil and criminal district courts of such county as members of said board shall be \$1,500 in addition to that paid the other district judges of the State, said additional salary to be paid monthly out of the general funds of such county, upon the order of the commissioners court."

We have carefully studied the above statute and have made a search of the authorities which bear upon the subject matter in controversy, and we have particularly searched the decisions and opinions of the superior courts relative to their writings upon the constitutionality and application of the above quoted statute. We have found the leading case in Texas to be that of Jones v. Alexander, 59 S. W. (2d) 1080, opinion by Judge Sharp of the Commission of Appeals and adopted by the Supreme Court of Texas.

We quote from that opinion as follows:

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(at page 1082)

"Using the plain language of the Constitution, which provides that the district court shall have 'original jurisdiction and general control over . . . minors under such regulations as may be prescribed by law,' as a basis upon which to plant the validity of article 5139 et seq., which imposes additional duties upon district judges in certain counties for which extra compensation will be allowed, and when considered in connection with the many legislative acts imposing many other duties not strictly judicial upon district judges and the decisions of our courts bearing upon this question, we are unable to find any sound reason for holding that this act contravenes section 40 of article 16 of the Constitution or of any other provision of the Constitution." (Our emphasis)

(at page 1083)

"The Constitution has placed no limitation upon the Legislature as to the amount of salaries to be paid district judges. Therefore, the Legislature has a right to pass an act lowering or raising the salaries of district judges. In fixing the amount of such salaries, the Legislature may take into consideration the population and size of the county, its taxable values, and the general conditions existing therein. The Legislature in this instance has seen fit to place certain additional duties upon the district judges in certain counties and has allowed extra compensation for such service. In doing this, the Legislature acted clearly within its constitutional powers. *Clark v. Finley*, 93 Tex. 171, 54 S. W. 343, 346."

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Subsequent to the date that the case of Jones v. Alexander was passed upon by the Commission of Appeals of Texas and thereafter adopted by the Texas Supreme Court, the case of Holland v. Harris County (103 S. W. (2d) 1067) was appealed to the Court of Civil Appeals for the First Supreme Judicial District of Texas at Galveston, Texas. The Holland case involved the question of whether or not a "special district judge" would be entitled to recover in addition to the regular pay of the district judge an additional amount of money as a member of the Juvenile Board upon a per diem basis under authority of Article 6821 of the Revised Civil Statutes. This case necessarily involved the construction of Article 5139, Revised Civil Statutes, in connection with Article 6821.

During the time the Holland case was pending in the First Court of Civil Appeals, a certified question was submitted from that court to the Supreme Court pertinent to the questions involved in that controversy. Judge German, a member of the Commission of Appeals, in his opinion, which was subsequently adopted by the Supreme Court of Texas, in determining the questions presented to the court, wrote as follows:

(102 S. W. (2d) 196, at page 197)

"... We think the question is settled by the plain language of the statute (Article 5139, Revised Civil Statutes) in light of the decision in the case of Jones v. Alexander, . . . (parentheses ours)

"The constitutionality of this article was upheld in the case of Jones v. Alexander, supra. The underlying principle upon which the law was sustained was the right of the Legislature to impose upon district judges additional duties and labors, not judicial in character, and because of such imposed additional duties to increase their salaries in a manner commen-

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surate with the services to be performed. The language of the opinion clearly indicates that the statute was construed as establishing the annual salaries of district judges in counties having a juvenile board at a sum \$1,500 per year higher than the salaries paid judges who were not members of such a board; and not as mere additional compensation paid to such judges for services as members of the juvenile board. It seems to be the clear import of the statute to fix one salary of such judges and not merely to pay them the salary paid other judges and in addition to pay them compensation of \$1,500 per year for acting as members of the juvenile board. We think the purpose was not to pay them \$1,500 as members of the juvenile board, but to increase their salaries \$1,500 per year because of the additional duties and labors. This \$1,500 is a part of their pay as district judges. This being true, it follows that under article 6821 the special judge is entitled to receive the 'same pay' as the regular district judge in whose behalf he serves."

Therefore, in light of the wording of the statute and the holdings of the Supreme Court of Texas relevant to its application, and the facts presented to us showing that McLennan County is now a County with a population in excess of 100,000 persons, we accordingly advise you as follows:

1. In answer to your first question, you are advised that it is the opinion of this department that the additional sum of \$1,500 per year should be allowed the regular judges of McLennan County.
2. This department has held in its opinion No. 0-2337 addressed to the Hon. E. G. Mosely, Civil District Attorney, Dallas, Texas, that the 1940 census

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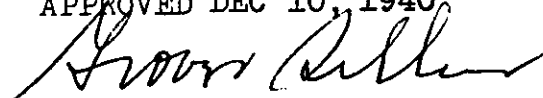
would become controlling when the figures were compiled and made available to the public. It is therefore the opinion of this department that the District Judges of McLennan County are entitled to such compensation beginning as of the date that McLennan County qualified under the statute as being a county "having a population of one hundred thousand or over,"

3. It is the opinion of this department that the Commissioner's Court of McLennan County has no legal basis for exercising a discretion in determining whether or not to order the payment of the additional amount specified in the statute.

Trusting that the above satisfactorily answers your questions, we are,

APPROVED DEC 10, 1940

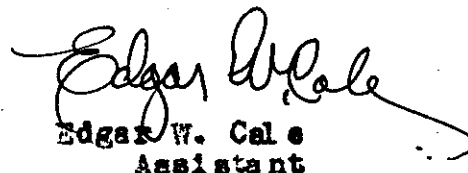
Yours very truly



ATTORNEY GENERAL OF TEXAS

FIRST ASSISTANT
ATTORNEY GENERAL

By



Edgar W. Cale
Assistant

EWC:LM

